

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: CS/SB 660

INTRODUCER: Commerce Committee and Senator Justice

SUBJECT: Automatic Renewal of Service Contracts

DATE: March 23, 2009 REVISED: 04/01/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	Fav/CS
2.	Messer	Burgess	BI	Fav/1 amendment
3.			JU	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This committee substitute (CS) requires clear and conspicuous disclosure of automatic renewal provisions in service contracts if the provision renews a contract for more than one month and if the provision causes the contract to be in effect more than 6 months after the contract was initiated. This CS makes automatic renewal provisions void and unenforceable if any requirements of the CS are violated, except under certain circumstances.

If the length of the service contract is 12 months or more, and if the contract automatically renews for a period of more than 1 month, the provider must notify the consumer, in a clear and conspicuous manner, of the renewal and how to cancel the renewal “no less than 30 days and no more than 60 days before” the deadline provided in the service contract. The contract renewal is effective until the consumer terminates the service contract. The consumer must give the seller notice of his or her intent to terminate the contract.

This CS provides exemptions from the disclosure and notice requirements for financial institutions, health studios, warranty associations, and private companies providing certain municipal services.

This CS creates an undesignated section of the Florida Statutes.

II. Present Situation:

Some contracts are designed to continuously renew unless a party takes action to cancel the contract before the deadline in the contract. In some instances, a consumer may not realize that his or her contract contains an automatic renewal provision. Therefore, consumers may end up with a contract period longer than anticipated.

Federal law provides a measure of protection against unfair or deceptive contract provisions under the Federal Trade Commission Act, which makes unlawful any “unfair or deceptive acts or practices in or affecting commerce.”¹ Generally, unfair or deceptive contract terms relating specifically to automatic renewal provisions in contracts are regulated by state laws. For example, New York, Illinois, North Carolina, and Utah all have laws requiring specific notification of renewal clauses in contracts.²

Currently, Florida law does not explicitly require companies to notify customers about the automatic renewal of a contract. However, challenges may be made to unfair and deceptive practices affecting commerce under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), Chapter 501, part II, F.S. The act prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. “Trade or commerce,” which includes the conduct of any trade or commerce, is defined as the advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. The act provides for remedies such as cease and desist orders, injunctions, remedies by the enforcing authority, and the award of attorney’s fees and costs to the prevailing party in civil litigation. A willful violation of the FUDTPA subjects the violator to a civil penalty of not more than \$10,000 for each violation.

Florida currently limits contract renewals of specific kinds of contracts. For example, contracts for dance studio and health studio services are limited to 36 months and are only renewable annually.³

III. Effect of Proposed Changes:

Section 1 Requires sellers to clearly and conspicuously disclose and notify consumers of automatic renewal provisions contained in service contracts under certain circumstances.

Subsection (1)(a) defines “automatic renewal provision” to mean a provision under which a service contract is renewed for more than one month and the renewal causes the contract to be in effect more than 6 months after entering the contract. This paragraph also provides for the cancellation of a service contract by the consumer if the consumer provides the seller notice of his or her intention to cancel the contract, making the renewal ineffective.

¹ See 15 U.S.C. §45.

² See NY Gen. Oblig. §5-903, 815 ILCS 601/10, N.C.G.S.A. §75-41, and Utah Code Ann. §15-10-101.

³ See ss. 501.143(4)(g) and 501.017(1)(e), F.S.

Subsection (1)(b) defines “consumer” to mean “an individual” receiving service, maintenance, or repair under a service contract and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, individuals who enter into a contract for business purposes, or a government entity.⁴ Subsection (1)(c) defines “seller” to mean any person or entity that is a service contract provider. Subsection (1)(d) defines “service contract” to mean any written contract for performance of services over a certain period of time or for a specific duration.

Subsection (2) provides specific requirements for service contracts containing automatic renewal provisions. Automatic renewal provisions are required to be clearly and conspicuously disclosed in service contracts. Furthermore, if a contract has a term of 12 months or more and contains an automatic renewal provision that renews the contract for more than 1 month, the consumer must be notified in writing or electronically of the pending renewal between 30 and 60 days before the cancellation deadline. For example, if the contract will automatically renew on January 1, then the consumer must be notified no earlier than October 1 and no later than November 1.

The written or electronic notice must clearly and conspicuously inform the consumer that the contract will automatically renew unless the contract is cancelled by the consumer. The notice must also disclose methods by which the consumer can get more information about the renewal provision and the cancellation procedure.

The section provides that a violation of the notice requirements would void an automatic renewal provision, making it unenforceable, unless the seller demonstrates:

- It has established and implemented written procedures to comply with, and enforce, the requirements as part of their routine business practice;
- The failure to comply was the result of error; and
- It has provided, as a part of its routine business practice, a refund or credit for the unearned portion of the renewed contract, starting from the date the seller is notified of the error.

This section exempts: state and federal financial institutions or any subsidiary or affiliate thereof; health studios, warranty associations, and private companies providing municipal public works services.

The exemption for warranty associations encompasses an exemption for motor vehicle service agreement companies, home warranty associations, and service warranty associations.

The exemption to private companies providing municipal public works services includes any private company authorized to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection, and garbage disposal plants. The exemption also covers any other service described under ch. 180, F.S., that may be performed by these private companies, including cleaning and improving street channels or other bodies of water; regulating the flow of streams; providing water and alternative water supplies; collecting and disposing of sewage or garbage; constructing, maintaining, operating or repairing hospitals, jails, and golf courses; and constructing, operating, or maintaining gas plants.

⁴ See s. 501.603, F.S., for definition of “individual.”

Section 2 provides an effective date of July 1, 2009, and provides that this CS only applies to contracts entered into on or after the effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This CS may have an indeterminate fiscal impact due to the notification requirement in the CS. Additionally, there may be an indeterminate impact on service contract providers who fail to meet the new notification and disclosure obligations as provided in the CS, as they could be required to provide refunds to consumers.

This CS will protect consumers by putting consumers on notice of contracts that automatically renew.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

- Clarifies that the defined term “consumer” does not include businesses or government entities, thereby allowing automatic renewals in business-to-business agreements and agreements made with government entities.
- Conforms the definition of “automatic renewal provision” to the restriction parameters specified in the bill to exclude contracts that renew for less than one month.
- Clarifies the definition of “seller” to mean any person or entity that provides services under a service contract.
- Corrects a technical deficiency.

B. Amendments:**Barcode 611636 by Banking and Insurance on April 1, 2009:**

Provides additional exemptions from the disclosure and notice requirements of the CS; this amendment excludes electric utilities, as defined in s. 366.02(2) F.S., and all entities licensed under ch. 624, 327, 634, 636, 641 F.S. (“TITLE AMENDMENT”)